



**mahp**  
Michigan Association  
of Health Plans

**PRESIDENT**

Bruce Hill  
*HealthPlus of Michigan*

**PRESIDENT-ELECT**

Beverly A. Allen  
*CoventryCares of Michigan/Aetna*

**SECRETARY**

Jon Cotton  
*Meridian Health Plan of Michigan*

**TREASURER**

Randy Narowitz  
*Total Health Care*

**EXECUTIVE COMMITTEE  
MEMBERS-AT-LARGE**

Stephen Harris  
*Molina Healthcare of Michigan*

Kathy Kendall  
*McLaren Health Plan*

Kimberly Thomas  
*Priority Health*

**BOARD MEMBERS**

James Connelly  
*Health Alliance Plan*

Carrie Harris-Muller  
*Harbor Health Plan*

John Randolph  
*Paramount Care of Michigan*

Dennis Reese  
*Physicians Health Plan*

Mark Saffer  
*HAP Midwest Health Plan*

Dennis Mouras  
*UnitedHealthcare Community  
Plan, Inc.*

Pamela Silva  
*Grand Valley Health Plan*

Dennis Smith  
*Upper Peninsula Health Plan*

**EXECUTIVE DIRECTOR**

Richard B. Murdock  
*Michigan Association of  
Health Plans*

September 10, 2014

Re: MAHP Testimony on HB 5792

Chairman Lund and members of the House Insurance Committee,

Thank you for the opportunity to address the House Insurance Committee in regard to HB 5792. My name is Dominick Pallone, and I am the Deputy Director of the Michigan Association of Health Plans (MAHP).

The Michigan Association of Health Plans is a nonprofit corporation established to promote the interests of our 17 member health plans. The mission of the Michigan Association of Health Plans is “to provide leadership for the promotion and advocacy of high quality, affordable, accessible health care for the citizens of Michigan.”

While our internal Legislative Committee has yet to review the recently introduced HB 5792 and thus the MAHP has no official position on this legislation at this time, I greatly appreciate the opportunity to discuss the legislation and its potential impact on Health Plans operating throughout our state. We believe the adoption of this issue to be of importance to our members; however we have identified at least one area of language which is of concern involving the filing of a new “Enterprise Risk Report.”

Section 1325A of HB 5792 would require that “the ultimate controlling person of an insurer...” must annually file an Enterprise Risk Report with DIFS. This Report must include a listing of the “ultimate controlling person’s” material risks within the holding company system that could pose enterprise risk to the insurer. We believe that the requirement should direct the “insurer”, that is to say the specific entity regulated by DIFS, to file the annual enterprise risk report. The difference may seem subtle, but it is of major concern for our member Health Plans, as some are owned by parent Health Care Systems.

We would respectfully request that the Committee consider amending the language so as to mandate that the “insurer” be required to file an enterprise risk report. The “ultimate controlling person” could still be made to register with the Department as required under Section 1324, thereby meeting the perceived policy goals of the NAIC model Holding Company Act. (We have attached proposed amendments to my testimony)



There may be some people concerned that this slight deviation from the NAIC model Holding Company Act may cause this bill to not be “substantially similar” to that of other states. In anticipation of this argument, I would submit that the NAIC (F Committee) has identified the provisions of the model Holding Company Act that are to be adopted in order to meet accreditation standards. State are indeed required to have a law mandating the filing of an Enterprise Risk Report. **However, the NAIC Model Form F (Enterprise Risk Report) instructs that it is to be filed by the “registrant” (the insurer) or “applicant” (an entity seeking to gain control of an insurer).** The Model Form F also does not require disclosure of enterprise risks if the information was disclosed in the insurer’s annual registration statement (Form B). The annual registration statement (Form B) specifically requires the annual financial statements of the ultimate controlling person.

I would also like to draw the Committee’s attention to an important area where a deviation from the NAIC Model is already evident in HB 5792 pertaining to the requirement for the Commissioner/Director to hold public hearings before approving any merger or acquisition. The introduced bill most notably deviates from the NAIC Model in that it would not require a public hearing to held and does not afford persons affected by the potential merger or acquisition the right to present evidence, cross examine witnesses, and offer arguments consistent with normal discovery procedures. The introduced version of the legislation also does not delineate the competitive standard to be used by the Department in determining if a merger or acquisition would “substantially lessen competition in insurance... or tend to create a monopoly.”

It is also important to note the NAIC “Financial Regulation Standards and Accreditation Program” requires each state’s insurance department to be periodically reviewed by an independent NAIC review team to assess compliance with the NAIC Financial Regulation Standards. According the 2014 NAIC accreditation program, “departments meeting the Standards will be publicly acknowledged, while Departments not in compliance will be given guidance by the NAIC to bring them into compliance.” Pre-accreditation reviews are conducted one year before the review, and interim reviews of state laws and regulations are conducted annually.

Again, we would respectfully ask that the Committee consider amending the introduced bill to apply the responsibility of filing an Enterprise Risk Report with the “insurer” rather than the “ultimate controlling person”. It is our belief that this change would keep the bill consistent with instructions of the NAIC Model Form F. Should a NAIC review identify Michigan as non-compliant with the NAIC Financial Regulation Standards because of this amendment (or for any other reason), we stand committed to work with the Department, the Legislature, and the NAIC to come into compliance.

Thank you for your time and attention to this important topic.

Sincerely,

Dominick Pallone  
Deputy Director

**MAHP PROPOSED CHANGES  
INSURANCE HOLDING COMPANY ACT  
August 20, 2014**

SEC. 1325A. ~~(1) THE ULTIMATE CONTROLLING PERSON OF AN INSURER~~ SUBJECT TO REGISTRATION UNDER SECTION 1324 SHALL FILE AN ANNUAL ENTERPRISE RISK REPORT WITH THE DIRECTOR OR A JURISDICTION DESIGNATED BY THE DIRECTOR. THE REPORT MUST, TO THE BEST OF THE ~~ULTIMATE CONTROLLING PERSON~~INSURER'S KNOWLEDGE AND BELIEF, IDENTIFY THE MATERIAL RISKS WITHIN THE INSURANCE HOLDING COMPANY SYSTEM THAT COULD POSE ENTERPRISE RISK TO THE INSURER.

(2) THE ENTERPRISE RISK REPORT SHALL BE BASED ON THE NATURE, SCALE AND COMPLEXITY OF THE INSURER AND INSURANCE HOLDING COMPANY'S BUSINESS. IF THE ULTIMATE CONTROLLING PERSON OF THE INSURER DOES NOT HAVE AS ITS PRIMARY BUSINESS THE OWNERSHIP AND OPERATION OF INSURERS, THE IDENTIFICATION OF MATERIAL RISKS WITHIN THE INSURANCE HOLDING COMPANY SYSTEM MAY BE MADE BY INCLUDING THE AUDITED CONSOLIDATED FINANCIAL STATEMENTS OF SUCH ULTIMATE CONTROLLING PERSON.

**RATIONALE**

The revisions to Section 1325A(1) reflect the fact that the insurer, as the regulated entity, has the burden of making required filings. This is also consistent with the NAIC Model Form F (Enterprise Risk Report). The NAIC Model Form F provides that it is to be filed by the registrant (the insurer) or applicant (an entity seeking to gain control of an insurer). Also, the certification as to the "knowledge and belief" is with respect to the registrant/applicant under the Model Form F, and not with respect to the ultimate controlling person.

The addition of Section 1325A(2) is intended to include the well-recognized rule that enterprise risk management should be based on the "nature, scale and complexity" of the insurer/holding company's business." *See, e.g., International Association of Insurance Supervisors, Insurance Core Principles.*

With respect to meeting the risk identification requirements under the Enterprise Risk Report, the NAIC Model Form F does not require disclosure of enterprise risks if the information was disclosed in the insurer's annual registration statement (Form B):

"The Registrant/Applicant, to the best of its knowledge and belief, shall provide information regarding the following areas that could produce enterprise risk as defined in [insert cross reference to definition of Enterprise Risk in Section 1F of the Act], provided such information is not disclosed in the Insurance Holding Company System Annual Registration Statement filed on behalf of itself or another insurer for which it is the ultimate controlling person."

The annual registration statement requires consolidated audited financial statements of the ultimate controlling person. *See* DIFS, Form B, Item 8 ("The financial statements [to be submitted with Form B] shall include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.")

## **NAIC ACCREDITATION CONSIDERATIONS**

The NAIC E Committee has identified the provisions of the model Insurance Holding Company System Regulatory Act that are to be adopted by states in order to meet accreditation standards. *See* [http://www.naic.org/committees\\_f.htm](http://www.naic.org/committees_f.htm). States are required to have a law mandating the filing of an Enterprise Risk Report, but the content of the report and the party filing the report are not among the required provisions. As noted above, the proposed changes to Section 1325A are consistent with the NAIC Model Form F. Consequently, the proposed changes, if adopted, should not present risks to Michigan in terms of maintaining accreditation.